

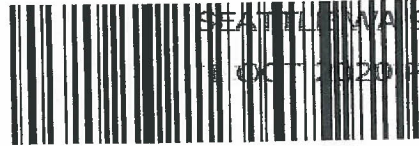


Puyallup Tribe of Indians

3009 East Portland Avenue
Tacoma, Washington 98404



CERTIFIED MAIL®



SEATTLE WA 980

OCT 01 2020 PM 3

7018 3090 0001 6780 1191



U.S. POSTAGE >> PITNEY BOWES

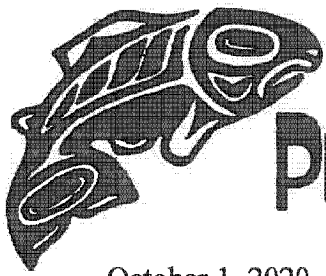


ZIP 98404 \$ 006.90⁰
02 1W
0001381119 OCT. 01. 2020

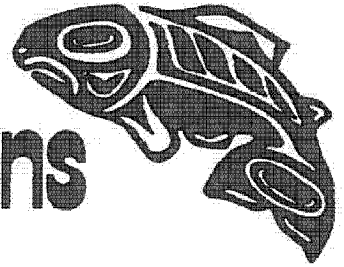
Chris Hladick, Regional Administrator
U.S. EPA, Region 10
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

98101-314025





Puyallup Tribe of Indians



October 1, 2020

Via Certified Mail, Return Receipt Requested

Electron Hydro, LLC
1800 James Street, Suite 201
Bellingham, Washington 98225

Corey Alefteras
16417 Sundance Ave SE
Yelm, Washington 98597

Thom A. Fischer
613 Linden Road
Bellingham, Washington 98225

Electron Management, LLC
1800 James Street, Suite 201
Bellingham, Washington 98225

Chris Spens
2877 Lake Whatcom Blvd
Bellingham, Washington 98229

Electron Holdings, Inc.
1800 James Street, Suite 201
Bellingham, Washington 98225

Tollhouse Energy Company
1800 James Street, Suite 201
Bellingham, Washington 98225

Re: Sixty-day Notice of Violations of the Clean Water Act

Dear Sirs:

I am writing to inform you of the Puyallup Tribe's intent to file a citizen suit against Electron Hydro, LLC, Electron Management, LLC, Tollhouse Energy Corp., Electron Holdings, Inc., Thom A. Fischer, Corey Alefteras and Christopher Spens in accordance with Section 505(a) of the Federal Water Pollution Control Act (Clean Water Act or CWA), 33 U.S.C. § 1365(a). The Puyallup Tribe hereby gives notice, pursuant to Section 505(b) of the CWA, 33 U.S.C. § 1365(b), that you have violated and continue to violate Sections 301 of the Clean Water Act, 33 U.S.C. § 1311(a) by discharging pollutants from the temporary bypass channel located at the Electron Hydro headworks site without a permit and by discharging pollutants from the Electron Hydro Powerhouse during operations and maintenance of the Electron Facility.

The Puyallup Tribe is a federal recognized indian tribe, with its reservation located along the Puyallup River in and near Tacoma, Washington. The Tribe owns the bed and the banks of the Puyallup River downstream from the facility, regulates the water quality of the River under its jurisdiction, and depends upon and has a Treaty Right to fish the waters of the Puyallup River and other surrounding waters of the Tribe's usual and accustomed fishing areas. The Puyallup Tribe works through hatchery operations and research on both wild and hatchery stocks to improve and recover salmon runs including species listed as threatened under the Endangered

Species act. The Tribe is not only outraged by the intentional and continued discharge of pollutants to the Puyallup River, but the discharge of pollutants directly impacts the Tribe, tribal members, the Tribe's resources, the listed and non-listed fish upon which the Tribe and its member rely, the Tribe's cultural resources, and the Tribe's Treaty Rights. The discharge of pollutants has reached the Tribe's portion of the Puyallup River and beyond into Commencement Bay. Your actions, in discharging pollutants, interfere with the Tribe's Treaty Right to fish. The Tribe is gravely concerned about the negative water quality impacts from such discharges and your failure to address properly these problems in compliance with the Clean Water Act.

Each violation of the Clean Water Act subjects you to penalties up to \$55,800.00 per violation per day. If you have any information demonstrating that one or more of the violations outlined in this notice is incorrectly stated, please immediately provide that information to us and specify to which violation you claim the information relates. This letter serves as notice of the Tribe's intent to file suit in U.S. District Court on or about the sixtieth (60th) day following the delivery of this letter.

Discharge of Pollutants Without a Permit

Section 301(a) of the CWA prohibits the "discharge of any pollutant" except as in conformance with several other sections of the Act, including sections 402 and 404, 33 U.S.C. §§ 1342; 1344. 33 U.S.C. § 1311(a). Section 402 of the CWA in turn provides that pollutants may be discharged only in accordance with the terms of an NPDES permit issued pursuant to that Section. 33 U.S.C. § 1342.

On information and belief, while working at the facility you released a pollutant into the Puyallup River without a permit, in violation of the CWA. Specifically, when installing a HDPE liner in the temporary bypass channel, using various mechanized construction equipment, you placed approximately 2,409 square yards of Field Turf into the river. After that process was complete, the river flow was diverted through the bypass channel on July 28, 2020.

On the night of July 29, 2020, the flow of the river ruptured the HDPE liner, which resulted in the release of approximately 619 square yards of Field Turf, and an estimated four to six cubic yards of crumb rubber (used as infill for the turf).

On information and belief, Field Turf remains in the river, both in the channel where it was initially placed, and downstream, where sections were torn lose remain. In addition, crumb rubber that was place in the river remains throughout the 45 miles of river from the site to Commencement Bay. In addition, on information and belief, the crumb rubber has reached and remains in Commencement Bay and Puget Sound.

Such a discharge—of both the Field Turf and crumb rubber—occurred without an appropriate permit. The continued presence of turf and crumb rubber constitutes an ongoing violation of the aforementioned section of the CWA, section 1311(a).

In addition, during maintenance of the facility and draining of the forebay of the facility, you caused a discharge of pollutants from mud, sediment, and other materials collected in the forebay over at least 5 years, to be discharged in a slurry into the Puyallup River without a permit. Such a discharge was also a violation of the CWA.

The Tribe is also aware that you now propose to put unprecedented amount of large rock, without a permit, in the water to armor and construct a wholly new dam structure. Each discharge of rock is also a separate violation of the Clean Water Act.

Penalties and Injunctive Relief

As outlined above, we have evidence that you are in violation of the CWA by discharging pollutants without a permit. The violations in this notice are ongoing. We intend to sue for all violations, including those yet to be uncovered and those committed after the date of this notice of intent to sue.

The citizen suit provision of the CWA grants the district court jurisdiction to “enforce such an effluent standard or limitation...and to apply any appropriate civil penalties” under section 309 of the Act. 33 U.S.C. § 1365(a). Section 309 of the CWA provides for civil penalties of up to \$55,800.00 per day per violation. 33 U.S.C. § 1319(d) (adjusted by 40 C.F.R. § 19.4).

The Puyallup Tribe anticipates filing suit against you sixty days from the date of this notice in federal District Court, to seek penalties and injunctive relief.

Persons Giving Notice

The full name, address, and telephone number of the party providing this notice is:

The Puyallup Tribe of Indians
3009 E. Portland Avenue
Tacoma, WA 98404

The attorney representing the Tribe in this matter is:

Lisa A.H. Anderson
Law Office of the Puyallup Tribe of Indians
3009 East Portland Ave
Tacoma, WA 98404
Lisa.Anderson@puyalluptribe-nsn.gov
(253) 573-7852

During the sixty (60) day notice period, the Tribe is willing to discuss effective remedies and actions that might be taken to assure compliance in the future with the CWA. If you wish to

Sixty-day Notice of Violations of the Clean Water Act

October 1, 2020

Page 4 of 4

discuss any aspect of this notice or to discuss settlement of this matter prior to commencement of suit, please contact us.

Sincerely,



Bill Sterud
Chairman
Puyallup Tribe of Indians

COPIES TO:

Laura Watson, Director
Washington Department of Ecology
300 Desmond Drive SE
Lacey, Washington 98503

Andrew Wheeler, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N. W.
Washington, DC 20460

Chris Hladick, Regional Administrator
U.S. EPA, Region 10
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

William Barr, Attorney General
United States Department of Justice
950 Pennsylvania Ave., NW
Washington, D.C. 20530-0001

Thom Fischer, Registered Agent for Electron Hydro LLC, Electron Management LLC and
Tollhouse Energy
1800 James Street, Suite 201
Bellingham, WA 98225

Law Offices of Gene R. Moses, P.S., Registered Agent for Electron Holdings, Inc.
2200 Rimland Dr, Suite 115
Bellingham, WA 98226